

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

**MOTION OF DEFENDANT, MUHAMMED A. NIAZ
TO DISMISS PLAINTIFF'S COMPLAINT¹**

COMES NOW Muhammed A. Niaz ("Defendant Niaz"), by and through his undersigned counsel, and respectfully moves this Honorable Court to enter an Order pursuant to Federal Rules of Civil Procedure 12(b)(6) dismissing Plaintiff's Complaint for failure to state a claim upon which relief can be granted. In support of this Motion, Defendant Niaz offers the Memorandum of Points and Authorities filed simultaneously herewith.

MARSHALL, DENNEHEY, WARNER,
COLEMAN AND GOGGIN

BY: /s/ Lorenza A. Wolhar
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Wilmington, DE 19899-8888
(302) 552-4300
Attorneys for Defendant, Muhammed A. Niaz

Dated: November 7, 2006

¹ CMS waives its right to file an Opening Brief and submit this Motion in lieu thereof pursuant to Local Rule 7.1.2. However, CMS reserves the right to file a Reply Brief.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MICHAEL LEE ROSE,)
Plaintiff,)
v.)
D.O.C. COMMISSIONER STAN TAYLOR,)
First Correctional Medical, Correctional)
Medical Services, Dr. Niaz)
Defendants.)
)

) Civil Action No. 06-370-JJF
)
) TRIAL BY JURY
) OF TWELVE DEMANDED
)
)

CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2006, I electronically filed the Motion of Defendant, Muhammed A. Niaz, to Dismiss Plaintiff's Complaint with the Clerk of Court using CM/ECF, which will send notification of such filing to the following:

I hereby certify that on November 7, 2006, I have mailed by United States Postal Service, the Motion of Defendant, Muhammed A. Niaz, to Dismiss Plaintiff's Complaint to the following non-registered participant:

Michael Lee Rose
SBI# 097880
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

BY: /s/ Lorenza A. Wolhar
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Defendants.)
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ORDER

AND NOW, this _____ day of _____, 2006, upon consideration of the Motion of Defendant, Muhammed A. Niaz, to Dismiss Plaintiff's Complaint and any Response thereto, it is hereby ORDERED that the Motion is GRANTED in favor of Defendant, Muhammed A. Niaz and all claims therein against Defendant, Muhammed A. Niaz are dismissed with prejudice.

J.